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In re Application of
Makoto Kudo
Application No. 10/601,136
Filed: June 20, 2003
Attorney Docket No. 81751.0062

OFFICE OF PETITIONS

DECISION ON PETITION

This is decision on the renewed petition filed December 8, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment.

On December 14, 2005, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application became abandoned on March 15, 2006. On August 4, 2006, the Office mailed a Notice of Abandonment.

Petitioner asserted that he filed a timely response to the nonfinal Office action on March 10, 2006. In support of the assertion, a copy of the reply in the form of an amendment, bearing a certificate of mailing dated March 10, 2006, accompanied the original petition of August 14, 2006. Nevertheless, the record does not show that the USPTO received the amendment. Therefore, petitioner was relying on the certificate of mailing as evidence of the timely filing of the amendment on March 10, 2006.

Pursuant to Section 711.03(c)(I)(B) of the Manual of Patent Examining Procedure:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application).

With this renewed petition, petitioner submitted an adequate statement under 37 CFR 1.8(b)(3), attesting to a personal knowledge of the mailing of the original response on the date indicated on the certificate by the person who signed the certificate.

The present petition satisfies the requirements of 37 CFR 1.8(b). The renewed petition to withdraw the holding of abandonment is **granted**. Accordingly, the holding of abandonment for failure to file a timely reply to the nonfinal Office action of December 14, 2005, is withdrawn and the application is restored to pending status. The Office will accept the copy of the reply submitted with the original petition on August 14, 2006, in place of the reply mailed on March 10, 2006.

This application is being referred to Technology Center AU 2181 for appropriate action on the amendment submitted on August 14, 2006 (certificate of mailing dated March 10, 2006).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination process should be directed to the Technology Center.

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